

TOWN OF LAUDERDALE-BY-THE-SEA

AGENDA ITEM REQUEST FORM

Vice Mayor Dodd

Department Submitting Request

Interim Town Manager Connie Hoffmann

Dept Head's Signature

**NATURE OF
AGENDA ITEM**

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Sept. 20 Roundtable | <input type="checkbox"/> Ordinance | <input type="checkbox"/> Old Business |
| <input type="checkbox"/> Reports | <input type="checkbox"/> Resolution | <input checked="" type="checkbox"/> New Business |
| <input type="checkbox"/> Consent Agenda | <input type="checkbox"/> Quasi Judicial | <input type="checkbox"/> Other |

SUBJECT TITLE: PROFESSIONAL SERVICES CONTRACT WITH ARMILIO BIEN-AIME

EXPLANATION: Vice Mayor Dodd has asked the Town Commission to consider an increase in the contract with Armilio Bien-Aime. The Town has contracted with Mr. Bien-Aime for development and presentation of programs for seniors since FY 2003/2004. The contract was last put out for competition via an Invitation to Bid (ITB 09-09-02) in September 2009 and Bien-Aime was the only bidder. Mr. Bien-Aime was awarded the contract in the amount of \$57,750 in November, 2009, the same amount the Town paid for his services in the prior year. The contract was retroactive to October 1, 2009. The Town Attorney and I concur that the contract can be renewed for an additional term of one year.

The Town Manager has the authority under the Purchasing Manual to exercise a renewal of the contract. Mr. Bien-Aime requested an increase of \$2,250 in the contract amount and I included that increase in the proposed budget for next year. I met with him last week after reviewing his contract and told him that I could not recommend that he receive the increase because a) there was no provision in the ITB or the contract that authorizes an increase in the price of the services offered, and b) we had just been advised that the County was reducing the CDBG grant. The Town Attorney has since advised me, however, that she believes I can treat the increase as a change order and, given the amount of the change, I have the authority to approve it under the purchasing guidelines of the Town. Given that Mr. Bien-Aime bid on this contract only last year, my inclination would not be to approve such a change order.

A member of the Commission asked me to determine the financial impact on Mr. Ben-Aime of the Commission's decision to no longer require him to pay for advertising the programs in Town Topics. Mr. Bien-Aime had been paying \$357.50 for advertising in each edition of Town Topics, until February of this year when the rate was increased to \$397.50. He has not paid for ads since that edition. In last fiscal year (FY 2009/2010) he paid a total of \$2,131.25 in advertising fees for Town Topics.

On a matter related to this issue, I want to advise the Commission that a member of Town staff met with County staff on Wednesday and found out that the letter they sent us advising our CDBG monies would be reduced actually referred to fiscal year 2011/2012, not next fiscal year. (Their letter said FY 2011, which normally refers to fiscal year 2010/2011.)

If the Commission wishes to grant Mr. Bien-Aime the increase he has requested, no formal action of the Commission is required as I can treat the increase as a change order and approve it administratively. No waiver of purchasing rules will be necessary.

RECOMMENDATION: Commission to provide direction to the Town Manager.

EXHIBITS: current Bien-Aime contract



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FISCAL IMPACT:

- ☒ Amount \$ 2,250.00
☐ Acct # 001-572-500-342 FY2010/2011 Budget Funds are available
☐ Transfer of funds required ☐ From Acct # _____

(CDBG Revenue will be \$29,209 in FY2010 /2011)

Town Attorney review required

☐ Yes
 ☐ No

Town Manager's Initials: CH

SERVICE AGREEMENT
SENIOR CENTER

THIS IS AN AGREEMENT, made this 10th day of November 2009, by and between:

THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, a municipal corporation organized and operating under the laws of the State of Florida, hereinafter referred to as "TOWN"

AND

Bien-Aime, Inc., corporation authorized to do business in the State of Florida, hereinafter referred to as Contractor.

WITNESSETH:

WHEREAS, the TOWN and Contractor have determined that it is in the best interest of the parties to jointly create, operate and fund a senior center ("Senior Center") in order to help address the social and recreational needs of the senior, youth and community residents of the TOWN; and

WHEREAS, the TOWN and Contractor agree to enter into this Service Agreement to provide services, operate the center and monitor and evaluate the success of such services;

NOW THEREFORE, in consideration of the mutual promises, terms, provisions, covenants and payments set forth herein, it is hereby agreed by and between the TOWN and Contractor as follows:

1.0 Recitals. The above recitals are true and correct and are hereby incorporated herein.

2.0 Services and Responsibilities of Contractor

2.1 Contractor agrees to create and operate a Senior Center in the TOWN to be operated at Jarvis Hall, the TOWN card room, and other TOWN locations, as they may be available, for the benefit of the citizens and residents of the TOWN. It is recognized and agreed by the parties that such programming shall be a gradual process that will develop according to the requests of participants and the identification of appropriate volunteers.

2.2 Contractor shall undertake the following responsibilities:

2.2.1 Hire and train the Senior Center Manager and volunteers. In connection therewith, Contractor shall maintain a daily sign-in sheet attached hereto as Exhibit "B" and current addresses and phone numbers relating to all volunteers that provide services hereunder. A cumulative monthly report shall be provided to TOWN reflecting this information for the preceding month.

2.2.2 Provide direct on-going management and supervision of the Senior Center Manager as well as all other necessary administrative support.

2.2.3 Provide all support services necessary for the operation and administration of the Senior Center, including, but not limited to human resources, marketing, and accounting support.

2.2.4 Assist in the promotion of positive media coverage for the Senior Center and the TOWN.

2.3 Contractor shall identify the interests and needs of the senior, youth and community residents of the TOWN and develop programs to fulfill those needs.

2.4 Contractor shall develop services and activities that will allow seniors to continue to maintain a physically active, emotionally stable, intellectually challenged and socially enriched lifestyle based upon their personal interests and abilities. Programs shall utilize the talents and past experiences of seniors or others willing to volunteer their time, for the benefit of their neighbors.

2.5 Contractor shall promote an awareness of existing services for seniors that may be available and shall assist seniors to obtain such needed services as may be available to them through Federal, State and County programs.

2.6 Contractor shall provide computers and computer desks to be used for computer classes which shall be offered by the Senior Center. Contractor shall also provide and manage special activities held by the Senior Center, including, but not limited to functions such as socials.

2.7 Contractor shall provide monthly progress reports to the TOWN Manager, or his or her designee. Contractor shall also provide additional reports to the TOWN Commission and Administration as requested.

2.8 Contractor shall provide the funding for all office supplies used in the Senior Center office.

2.9 Contractor shall identify, apply for and make best efforts to obtain grant funds for Senior Center activities.

3.0 Services and Responsibilities of TOWN.

3.1 The TOWN shall make available for use by the Senior Center existing space at Jarvis Hall, the TOWN's Card Room and other facilities and locations, such as the tennis and shuffleboard courts, and swimming pool that are not otherwise reserved for scheduled activities by other parties.

3.2 In order to coordinate the use of the TOWN's facilities, TOWN hereby designates the TOWN Manager, or her designee, as the Project Coordinator for the duration of this Agreement, unless otherwise substituted at the sole discretion of the TOWN Manager. The Project Coordinator shall receive progress reports from Contractor regarding the success of the Senior Center and shall monitor the success and utilization of the Senior Center by the residents of the TOWN.

3.3 The TOWN agrees to provide funding for the term of this Agreement not to exceed ~~\$5,775.00~~ to be disbursed in equal monthly payments of ~~\$4,812.50~~ on the first business day of each month during which services are rendered. Contractor shall provide a staff person who shall be and remain an employee of Contractor and shall not be an employee of the TOWN. The TOWN shall

provide office space for use by such staff person, including the use of a telephone line. The size, location and other details of the office space shall be solely within Town's discretion.

3.4 The TOWN shall be reimbursed by Contractor for costs and expenses of TOWN resources provided to assist with production and distribution of promotional materials, such as advertisements in "Town Topics." Reimbursement shall be at market rates.

3.5 Contractor shall submit a budget to the TOWN on or before June 1, 2010 so the TOWN may consider continuing the Senior Center for the Fiscal Year 2010/2011. Upon review and approval of such budget by the TOWN, the TOWN shall continue to provide funds for the purposes enumerated herein.

3.6 The TOWN and Contractor agree to cooperate in each other's efforts to operate and manage the Senior Center, including, but not limited to, providing any information necessary in order to obtain available grant funds for the operation of the Senior Center.

4.0 Term and Termination.

4.1 This Agreement shall take effect as of the date of execution, hereinafter the "Effective Date," however, the term of this Agreement shall commence as of October 1, 2009, hereinafter referred to as the "Commencement Date," and continue for a term of twelve (12) months, until September 30, 2010. This Agreement may be renewed upon the mutual consent of the parties.

4.2 It is the intent of the parties to continue to provide the developed services and activities provided by the Senior Center. However, the parties mutually agree and understand that there is no guarantee of funding by either party. Continued services is dependent on the availability of funding and on successful utilization of the Senior Center and services.

4.3 This Agreement may be terminated by either party for convenience, upon written notice to the other party. Upon receipt of such notice, the Agreement shall be terminated at the end of the next full calendar month subsequent to the month in which the notice was received in order to allow for the completion of scheduled activities and proper feedback to volunteer instructors and participants.

5.0 Liability Insurance.

5.1 Contractor shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and evidence of such insurance has been provided to and approved by the TOWN. All subcontractors of Contractor must also provide evidence of insurance to the Town before providing any services. No subcontractor may provide any services hereunder unless approved in advance by Town.

5.2 Certificates of insurance, reflecting evidence of the required insurance listed below, shall be filed with the TOWN prior to the commencement of services hereunder. These certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days prior written notice has been given to the TOWN. Policies shall be issued by companies authorized to do business under the laws of the State of Florida.

5.3 Financial Ratings of the insurance company must be no less than "A" in the latest edition of "Bests Key Rating Guide", published by A.M. Best Guide.

5.4 Insurance shall be in force until the termination of this Agreement and any subsequent renewals hereof. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, Contractor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. Contractor shall not continue work pursuant to this Agreement unless all required insurance remains in full force and effect.

5.5 Contractor shall obtain comprehensive general liability insurance to cover liability bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

- a. Bodily Injury
 - 1. Each Occurrence \$1,000,000
 - 2. Annual Aggregate 1,000,000
- b. Property Damage
 - 1. Each Occurrence 1,000,000
 - 2. Annual Aggregate 1,000,000
- c. Personal Injury
 - Annual Aggregate 1,000,000

5.6 Contractor shall obtain workers compensation insurance during the life of this Agreement to comply with statutory limits for all employees, and in the case any work is sublet, Contractor shall require the subcontractors similarly to provide workers compensation insurance for all employees. The following limits must be maintained:

- A. Workers Compensation Statutory
- B. Employer's Liability \$ 500,000 per occurrence

5.7 Comprehensive Auto Liability

- A. Bodily Injury
 - 1. Each Occurrence 1,000,000
 - 2. Annual Aggregate 1,000,000
- B. Property Damage
 - 1. Each Occurrence 1,000,000
 - 2. Annual Aggregate 1,000,000

Coverage shall include owned, hired, and non-owned vehicles.

5.8 A blanket fidelity bond (employee dishonesty bond) is not required of Contractor unless Contractor has employees. In such event, Contractor, at its sole cost and expense, shall obtain a blanket fidelity bond for each and every employee who is engaged by Contractor and made responsible in any manner by Contractor for the exercising or carrying out the duties under this Agreement. The bond shall be with a surety company authorized to do business in Florida and shall be in the amount of no less than three hundred fifty thousand dollars (\$350,000.00) for each person performing the duties of Contractor. The bond shall be conditioned upon the proper safeguarding of the monies and property for which the person has supervision, custody, or control. The bond shall further be subject to approval by the TOWN.

5.9 Contractor shall hold the TOWN, its agents, and employees, harmless on account of claims for damages to persons, property, or premises arising out of the operations to complete this Agreement and Contractor shall name the TOWN as an additional insured under their policies.

5.10 The TOWN reserves the right to require any other insurance coverage it deems necessary depending.

6.0 Protection of TOWN's Property.

6.1 All parties hereto understand and agree that the TOWN is self insured and does not intend to purchase insurance in connection with this Agreement.

6.2 At all times during the performance of this Agreement, Contractor shall protect the TOWN's property from all damage whatsoever on account of the work being carried on under this Agreement.

7.0 Indemnification.

7.1 Contractor agrees to release the TOWN from and against any and all liability and responsibility in connection with the performance of this Agreement and any acts or omissions hereunder. Contractor further agrees not to sue or seek any money or damages from the TOWN in connection with the above-mentioned matters.

7.2 Contractor agrees to indemnify, defend and hold harmless the TOWN, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the TOWN or any third party arising out of, or by reason of, or resulting from the CONSULTANT's negligent acts, errors, or omissions relating to the performance of this Agreement or any acts or failure to act in relationship thereto.

7.3 The parties recognize that various provisions of this Agreement, including, but not necessarily limited to this Section, provide for indemnification by Contractor and that Florida Statute §725.06 requires a specific consideration be given therefore. The parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by Contractor. Furthermore, the parties understand and agree

that the covenants and representations relating to this indemnification provision shall survive after the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify.

8.0 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that Contractor is an independent contractor under this Agreement and not the TOWN's employee for any purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor activities and responsibilities hereunder. All administrative procedures applicable to services rendered under this Agreement shall be those of Contractor and shall not conflict with the TOWN, H.U.D., or any United States policies, rules or regulations or conflict with any applicable statute, rule or law. Contractor agrees that it is a separate and independent enterprise from the TOWN, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between Contractor and the TOWN and the TOWN will not be liable for any obligation incurred by Contractor, including, but not limited to, unpaid minimum wages and/or overtime premiums.

9.0 Equal Employment Opportunity. In the performance of this Agreement, Contractor shall not discriminate against any firm, employee or applicant for employment or any other firm/individual in providing services because of sex, age, race, color, religion, ancestry or national origin.

10.0 Notice. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, by hand delivery or by facsimile transmission with confirmation of receipt, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the Contractor and the TOWN designate the following as the respective places for giving of notice:

TOWN: Esther Colon, Town Manager
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, Florida 33308
Phone: (954) 776-0576
Fax: (954) 776-1857

COPY TO: Susan L. Trevarthen, Town Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
200 East Broward Boulevard, Suite 1900
Fort Lauderdale, Florida 33301
Phone: (954) 763-4242
Fax: (954) 764-7770

CONTRACTOR: _____

11.0 Ownership. The parties agree that all items, equipment, property and materials owned or purchased by Contractor and provided under this Agreement shall remain the property of Contractor. The parties further agree that all items, equipment, property and materials owned or purchased by the TOWN and provided under this Agreement shall remain the property of the TOWN. Each party agrees to safeguard the other's property and to return such property in the same condition as provided, subject to ordinary wear and tear.

12.0 Assignments. Neither this Agreement nor any interest herein, shall be assigned, transferred or otherwise encumbered, under any circumstance by Contractor without the prior written consent of the TOWN. For purposes of this Agreement, any change of ownership of Contractor shall constitute an assignment which requires TOWN approval.

13.0 Records. Contractor shall keep accurate and complete books and records and require any and all subcontractors to keep books and records as may be necessary in order to record complete and correct entries as to personnel hours provided hereunder, and any expenses for which Contractor expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by the TOWN and shall be kept for a period of three (3) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by TOWN of any fees or expenses based upon such entries.

14.0 Public Records. Pursuant to Chapter 119, Florida Statutes, Florida's Public Records laws, Contractor shall maintain and make available for inspection any and all business records generated pursuant to this Agreement as required by law.

15.0 No Contingent Fees. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

16.0 Default. For the breach or violation of any provision hereunder, the TOWN shall have the right to terminate the Agreement by written notice without further liability to TOWN and at its discretion, to deduct from the Agreement price, or otherwise recover the full amount expended by Town to cure any such breach or violation.

17.0 Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

18.0 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

19.0 Headings. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

20.0 Contractor Compliance. CONTRACTOR acknowledges a certain agreement ("Funding Agreement") between TOWN and Broward County relating to partial funding of the Senior Center. CONTRACTOR agrees at all times during performance under this Agreement to adhere and comply with all terms and provisions of the Funding Agreement, including, by example and not limitation, all requirements in the Funding Agreement relating to "subgrantee" and any contractors of subgrantee. The Funding Agreement is attached hereto as Exhibit "A" and incorporated herein for all purposes. The TOWN's Invitation to Bid for Lauderdale-By-The-Sea Recreational and Senior Center Services and CONTRACTOR'S response thereto are incorporated herein for all purposes and also made a part of this Agreement. All work provided by CONTRACTOR shall be performed in a professional first class manner and form as required by all applicable Federal, State, and local rules, regulations, laws, codes, and ordinances, and in accordance with the this Agreement, including, by example and not limitation, in accord with the documents referenced herein.

21.0 Waiver. Failure of the TOWN to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right, but the same shall remain in full force and effect.

22.0 Legal Representation. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and accordingly the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

23.0 Severability. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

24.0 Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida.

25.0 Extent of Agreement. This Agreement represents the entire and integrated agreement between the TOWN and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral.

26.0 Attorney's Fees. In the event that either party brings suit for enforcement of this Agreement, the prevailing party shall be entitled to attorney's fees and court costs in addition to any other remedy afforded by law.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

ATTEST:

TOWN OF LAUDERDALE-BY-SEA

N. B. Smith Deputy
June White, Town Clerk Clerk

BY: Roseann Minnet
Mayor Roseann Minnet

APPROVED AS TO FORM:

Commission Approval: November 10, 2009

Susan L. Trevarthen
Susan L. Trevarthen, Town Attorney

CONTRACTOR:

Karen Gates
Witness Signature
Karen Gates.
Print Witness Name

BY: Armilio Bien-Aime
Contractor Signature
ARMILIO BIEN-AIME
Print Contractor Name

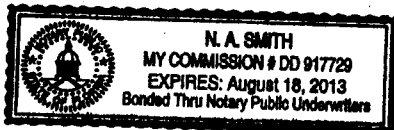
STATE OF FLORIDA)
COUNTY OF BROWARD) ss:

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Armilio Bien-Aime as President of Armilio Bien-Aime Corp an organization authorized to do business in the State of Florida, and acknowledged and executed the foregoing Agreement as the proper official of Florida for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/she is personally known to me or has produced as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 18th day of November, 2009.

N. B. Smith
NOTARY PUBLIC

My Commission Expires:



Attached are Exhibits A, B, C, and D.